4

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,556	09/26/2000	David E. Simmen	ST9-99-184	4709

7590   02/16/2007

George H Gates
Gates & Cooper LLP
Howard Hughes Center
6701 Center Drive West - Suite 1050
Los Angeles, CA 90045

EXAMINER
NGUYEN, CINDY

ART UNIT	PAPER NUMBER
2161	

MAIL DATE	DELIVERY MODE
02/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/669,556	SIMMEN, DAVID E.
	Examiner	Art Unit	
	Cindy Nguyen	2161	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>01 February 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): <u>See Continuation Sheet</u>.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1, 3-11, 13-21, 23-30*.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

   _____.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

U.S. Patent and Trademark Office
PTOL-303 (Rev. 08-06)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20070212

Continuation of 5. Applicant's reply has overcome the following rejection(s): Applicant argue that Zaharioudakis is not a prior art preference because Zahazioudakis has a November 5, 2002 filing date, which is more than two years

after the September 26, 2000 filing date of the present application, and which is more

than three years after the December 22, 1999 priority date of the present application.

Although Zahazioudakis is a continuation-m-part to Utility Application Serial No.

09/502,821, filed on February 11, 2000, which claims priority to Provisional

Application Serial No. 60/135,133, filed on May 20, 1999, at least some of the

specific portions of Zaharioudakis referred to in the rejections of the Office Action

are only entitled to the November 5, 2002 filing date, because these specific portions

of Zahatioudakis cannot be found in any of the prior patents. Note, for example,

that the rejections of independent claims 1, 11 mad 21 refer to the following portions

of Zaharioudakis: paragraphs [0031], [0041] and [0043]. However, Applicant's

attorney submits that paragraph [0043] of Zahazioudakis cannot be found in any of

the prior patents, paragraph [0043] of Zaharioudakis is not entitled to an effective

date earlier than the November 5, 2002 filing date, and thus paragraph [0043] of Zaharioudakis cannot be cited against Applicant's claims. In response, the provisional Application serial number 60/135133, filed on May 20, 1999 provided all the portions of Zahariousdakis as cited in the rejection as following:

Regarding claims 1, 11 and 21, The provisional application disclose: a method, an apparatus and an article of manufacture comprising a program storage medium readable by a computer and embodying one or more instructions executable by the computer to optimizing execution of a query that accesses data stored on a data store connected to a computer (page 6, lines 9-12, provisional application) or (0031, Zaharioudakis) comprising:

generating cardinality estimates (estimate the cost of the rewritten query) for one or more query execution plans for the query using statistics of one or more tables (system held statistics on the data to be access as the size of the table, the number of distinct values in particular column, page 9, lines 20-24 of provisional application) that vertically overlap the query (matching between query and AST, the query can be optimized by re-writing it to use the AST, page 15, lines 14 to page 16, lines 17) or (0043, Zaharioudakis);

using the generated cardinality estimates to determine an optimal query execution plan for the query (matching between query and AST, the query can be optimized by re-writing it to use the AST, page 15, lines 14 to page 16, lines 17, provisional application)   or (0043, Zaharioudakis);

executing the optimal query execution plan for the query in order to access the data stored on the data store connected to a computer and then output the accessed data (page 16, lines 15-18, Provisional application) or (0041 and 0043, Zaharioudakis).